

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

Jonathan Berall, M.D., M.P.H.,

Plaintiff,

v.

Teleflex Medical Incorporated,

Defendant.

CASE NO.: 5:22-CV-331-LF

**BERALL'S MOTION FOR
SCHEDULING A STATUS
CONFERENCE AND A MARKMAN
HEARING**

Plaintiff Jonathan Berall, M.D., M.P.H. respectfully requests that the Court set dates for a status conference and a *Markman* hearing, as much progress was made in this case prior to transfer to this Court in July 2022 and the next appropriate step is resolution of claim construction disputes.

Prior to transfer the parties had by November 2021 fully submitted *Markman* briefing regarding certain disputed terms of the '178 Patent by November 2021, though the *Markman* disputes were never heard or resolved. *See* Dkts. 320–321, 330–332, 347–348. The parties had agreed and attempted to submit a letter to the Court indicating that the next appropriate step in the case was the scheduling of a *Markman* hearing, but this submission was rejected as inconsistent with the court's procedures. Dkt. 407. Subsequently the parties have discussed a proposed schedule for the case. Teleflex has stated that it will seek leave to file a supplemental *Markman* brief of no more than 5 pages, to address additional case developments that occurred subsequent to filing of the parties' earlier *Markman* briefing. Dr. Berall believes additional briefing is unnecessary, but does not oppose so long as he is provided the opportunity to file a 5 page reply to Teleflex's supplemental brief. The parties have not otherwise been able to agree on a proposed schedule and thus Dr. Berall simply seeks the next steps of a status conference and *Markman*

hearing to get the case moving again. A proposed schedule for *Markman* briefing is provided in Appendix A.

Dr. Berall is an 83-year-old retired physician residing in Brooklyn, New York. After inventing a revolutionary, life-saving device known as a video laryngoscope in early 1996, Dr. Berall filed for the patent at issue in this case, U.S. Patent No. 5,827,178 (the “’178 Patent”), on January 2, 1997. Dr. Berall notified Defendant, then known as LMA North America, Inc., as early as 2006 regarding the ’178 Patent, its infringement of that patent, and its need to take a license. After Defendant ignored Dr. Berall for over four years, Dr. Berall filed the present action in the Southern District of New York on July 30, 2010, against LMA and several additional co-defendants. Following a nine-year reexamination proceeding at the Patent Office and stay of the litigation—culminating in Dr. Berall’s patent claims being confirmed valid—the litigation against Defendant was unstayed on December 1, 2020. Dkt. 207. On December 15, 2020, Defendant answered, agreeing that jurisdiction and venue were proper in the SDNY. Dkt. 213 ¶¶ 10–11. The parties and the Court held an initial status conference on January 21, 2021 (Dkt. 239), and engaged in extensive written and deposition discovery over the course of the next year. Defendant filed a motion for summary judgment on February 12, 2021, that was denied by the Court (Dkt. 255; Dkt. 334), as well as numerous motions to compel (Dkt. 315; Dkt. 363), and as noted above claim-construction briefing had been fully briefed in November 2021 (see Dkts. 320–321, 330–332, 347–348). Fact discovery was scheduled to close 60 days after the Court’s resolution of claim construction (expected early 2022), and expert discovery was scheduled to close 105 days thereafter. Dkt. 263.

Despite having previously agreed to venue in SDNY, Teleflex moved to transfer venue on December 2, 2021 (Dkt. 359), which the SDNY Court granted on July 11, 2022 (Dkt. 390). This

case has since been pending in this District. Subsequently, all remaining former defendants have settled, leaving Teleflex as the last holdout. Dr. Berall thus respectfully asks this Court to set a scheduling conference and date for a *Markman* hearing in the next couple of months, and further to set an expedited schedule so that Dr. Berall can have his claims against Teleflex resolved while he is still able to participate in litigation activities.

Dated: March 10, 2023

By: /s/ Patrick L. Butler

Patrick L. Butler

KIRKLAND & ELLIS LLP

1300 Pennsylvania Avenue NW

Washington, D.C. 20004

patrick.butler@kirkland.com

(202) 879-5000

NY State Bar. No. 5813456

Local Civil Rule 83.1(d) Counsel for Plaintiff, Jonathan Berall, M.D., M.P.H.

Christopher DeCoro

Peter Evangelatos

KIRKLAND & ELLIS LLP

601 Lexington Avenue

New York, NY 10022

(212) 446-4800

christopher.decoro@kirkland.com

peter.evangelatos@kirkland.com

Marcus E. Sernel

Eric Hayes

Andrew B. Walter

KIRKLAND & ELLIS LLP

300 N. LaSalle Street

Chicago, IL 60654

(312) 862-2200

msernel@kirkland.com

eric.hayes@kirkland.com

andrew.walter@kirkland.com

Counsel for Plaintiff, Jonathan Berall, M.D., M.P.H.

Appendix A

Proposed Case Schedule

Jonathan Berall, M.D., M.P.H. v. Teleflex Medical Inc.

<u>Deadline</u>	<u>Date</u>
Teleflex's Supplemental Briefing Regarding Claim Construction	March 23, 2023
Dr. Berall's Response to Teleflex's Supplemental Briefing Regarding Claim Construction	April 6, 2023
<i>Markman</i> Hearing	TBD April/May at Court's convenience

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CERTIFICATE OF SERVICE

The undersigned hereby certifies the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which pursuant to Local Civil Rule 4.1(e), constitutes service on all counsel of record.

This the 10th day of March 2023.

By: /s/ Patrick L. Butler

Patrick L. Butler

Kirkland & Ellis LLP

1300 Pennsylvania Avenue NW

Washington, D.C. 20004

patrick.butler@kirkland.com

(202) 879-5000

NY State Bar. No. 5813456

Local Civil Rule 83.1(d) Counsel for

Plaintiff, Jonathan Berall, M.D., M.P.H.